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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/051,712	01/17/2002	Daniel Shahaf	56150794-3	8637
26453	7590	08/06/2004	EXAMINER	
BAKER & MCKENZIE 805 THIRD AVENUE NEW YORK, NY 10022			EREZO, DARWIN P	
			ART UNIT	PAPER NUMBER
			3731	

DATE MAILED: 08/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/051,712

Applicant(s)

SHAHAF, DANIEL

Examiner

Darwin P. Erez

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 April 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 2 and 4-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 3,731,678 to Pyzel in view of US 3,565,068 to Bickford.
3. As to claims 1 and 23, Pyzel teaches a breathing apparatus comprising a filtering unit **13** having an inlet **18** for receiving contaminated air and at least one filter **22** for converting the contaminated air to purified air; a chamber (defined by top portion **11**) having an air opening, the chamber coupled to the filtering unit for collecting the purified air; a mouthpiece **16** coupled to the chamber, the mouthpiece operable for resting in the mouth of a user so that the user can inhale the purified air through the opening and exhale carbon dioxide through the opening without the use of hands; and an outlet **24** coupled to the chamber for releasing the exhaled carbon dioxide.

Pyzel is silent with regards to a nose plug removably attached to at least one of the chamber and the filtering unit, the nose plug operable for closing nasal passages of the user.

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Bickford teaches a breathing apparatus having a chamber with a nose plug **20** removably attached to at least one of the chamber and the filtering unit, the nose plug operable for closing nasal passages of the user.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to add the nose plug of Bickford in the apparatus of Pyzel because it prevents nasal inhalation and forces the user to breathe through the breathing device in order to receive filtered air.

4. As to claim 2, Pyzel teaches a breathing apparatus for removing or reducing smoke but is silent with regards to a transparent bag. Bickford teaches a breathing apparatus having a transparent bag **22** removably attached to the chamber, the transparent bag operable for preventing contaminated air from entering the eyes, ears and nose of the user. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the transparent bag of Bickford with the apparatus of Pyzel because it would protect the user's eyes from smoke.

5. As to claim 4, Pyzel is silent with regards to a clip attached to the filtering unit. Bickford teaches a breathing apparatus having a clip **27** to secure the device on a user's article. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made add a clip to the device of Pyzel, as disclosed by Bickford, because it secures the device to a user's belt or pocket when not in use.

6. As to claims 5 and 6, Pyzel teaches an elongated filtering unit having a pen-like configuration (elongated).

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7. As to claims 7 and 9, Pyzel teaches a breathing apparatus comprising: a filtering unit **13** having an inlet **18** for receiving contaminated air and at least one filter **22** for converting the contaminated air to purified air; a chamber (defined by top portion **11**) having an air opening, the chamber coupled to the filtering unit for collecting the purified air; a mouthpiece **16** coupled to the chamber, the mouthpiece operable for resting in the mouth of a user so that the user can inhale the purified air through the opening and exhale carbon dioxide through the opening without the use of hands; and an outlet **24** coupled to the chamber for releasing the exhaled carbon dioxide.

Pyzel is silent with regards to a nose plug removably attached to at least one of the chamber and the filtering unit, the nose plug operable for closing nasal passages of the user; and a transparent bag.

Bickford teaches a breathing apparatus having a chamber with a nose plug **20** removably attached to at least one of the chamber and the filtering unit, the nose plug operable for closing nasal passages of the user; and a transparent bag **22** removably attached to the chamber, the transparent bag operable for preventing contaminated air from entering the eyes, ears and nose of the user.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to add the nose plug of Bickford in the apparatus of Pyzel because it prevents nasal inhalation and forces the user to breathe through the breathing device in order to receive filtered air. Furthermore, it would have been obvious to one of ordinary skill in the art at the time the

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invention was made to use the transparent bag of Bickford with the apparatus of Pyzel because it would protect the user's eyes from smoke.

8. As to claim 8, Pyzel teaches a breathing apparatus comprising a filtering unit **13** having an inlet **18** for receiving contaminated air and at least one filter **22** for converting the contaminated air to purified air; a chamber (defined by top portion **11**) having an air opening, the chamber coupled to the filtering unit for collecting the purified air; a mouthpiece **16** coupled to the chamber, the mouthpiece operable for resting in the mouth of a user so that the user can inhale the purified air through the opening and exhale carbon dioxide through the opening without the use of hands; and an outlet **24** coupled to the chamber for releasing the exhaled carbon dioxide.

Pyzel is silent with regards to a nose plug removably attached to at least one of the chamber and the filtering unit, the nose plug operable for closing nasal passages of the user; a transparent bag; and a clip attached to the filtering unit.

Bickford teaches a breathing apparatus having a chamber with a nose plug **20** removably attached to at least one of the chamber and the filtering unit, the nose plug operable for closing nasal passages of the user; a transparent bag **22** removably attached to the chamber, the transparent bag operable for preventing contaminated air from entering the eyes, ears and nose of the user; and a clip **27** to secure the device on a user's article.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to add the nose plug of Bickford in the apparatus of Pyzel because it prevents nasal inhalation and forces the user to

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breathe through the breathing device in order to receive filtered air. Furthermore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the transparent bag of Bickford with the apparatus of Pyzel because it would protect the user's eyes from smoke. Moreover, it would have been obvious to one of ordinary skill in the art at the time the invention was made add a clip to the device of Pyzel, as disclosed by Bickford, because it secures the device to a user's belt or pocket when not in use.

9. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pyzel in view of Bickford, and in further view of US 4,709,651 to Lance.

The above combination of Pyzel/Bickford teaches a breathing device having a clip, as discussed in claim 4, but is silent with regards to the clip being a whistle. Lance teaches a whistle that is adaptable to be used as a clip. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the whistle clip of Lance in the device of Pyzel/Bickford because it would allow a user to get a rescuer's attention if the room is filled with smoke.

10. Claim 10, 11 and 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pyzel in view of Bickford and in further view of US 5,322,058 to Pasternack.

11. As to claims 10 and 24, the above combination of Pyzel/Bickford, as applied to claim 1, teaches all the limitation of the claim except for an expandable

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sac coupled to the filtering unit for collecting the carbon dioxide exhaled by the user.

Pasternack teaches a breathing device having an expandable sac **7** connected to a filtering unit for collecting carbon dioxide exhaled by the user .

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to add the expandable sac of Pasternack to the device of Pyzel/Bickford because it allows the user to reuse the exhaled breath with low carbon dioxide level back into the system (col. 2, lines 49-59).

12. As to claim 11, the above combination of Pyzel/Bickford (and in further view of Pasternack), as applied to claim 2, and in further view of Pasternack, teaches a transparent bag.

13. As to claim 13, the above combination of Pyzel/Bickford (and in further view of Pasternack), as applied to claim 4, teaches a clip.

14. As to claim 14, Pyzel teaches a carbon filter (col. 6, line 35).

15. As to claim 15, Bickford teaches an oxygen source **12**.

16. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pyzel in view of Bickford and Pasternack, and in further view of US 4,709,651 to Lance.

The above combination of Pyzel/Bickford/Pasternack teaches a breathing device having a clip, as discussed in claim 4, but is silent with regards to the clip being a whistle. Lance teaches a whistle that is adaptable to be used as a clip. Therefore, it would have been obvious to one of ordinary skill in the art at the

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time the invention was made to use the whistle clip of Lance in the device of Pyzel/Bickford/Pasternack because it would allow a user to get a rescuer's attention if the room is filled with smoke.

17. Claims 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bickford in view of Pasternack.

Bickford teaches a breathing apparatus comprising an oxygen unit for storing oxygen **12**; an outlet **74** coupled to the oxygen unit; a filtering unit **18** including one filter comprised of carbon dioxide absorbing materials (col. 3, lines 40-55); a mouthpiece **108** coupled to the filtering unit, the mouthpiece operable for resting in the mouth of a user so that the user can inhale the purified air through the opening and exhale carbon dioxide through the opening without the use of hands; a nose plug **20** removably attached to at least one of the chamber and the filtering unit, the nose plug operable for closing nasal passages of the user; a transparent bag **22** removably attached to the chamber, the transparent bag operable for preventing contaminated air from entering the eyes, ears and nose of the user; and a clip **27** to secure the device on a user's article.

Bickford is silent with regards to an expandable sac coupled to the filtering unit for collecting the carbon dioxide exhaled by the user.

Pasternack teaches a breathing device having an expandable sac **7** connected to a filtering unit for collecting carbon dioxide exhaled by the user .

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to add the expandable sac of Pasternack to the

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device of Bickford because it allows the user to reuse the exhaled breath with low carbon dioxide level back into the system (col. 2, lines 49-59).

Response to Arguments

18. Applicant's arguments filed 4/20/04 have been fully considered but they are not persuasive.

19. In response to applicant's arguments that Pyzel teaches away from using a nose plug, it should be noted the recitation in col. 4, lines 54-59 does not prevent the use of a nose plug. It merely states that a person can choose to breath from his/her nose or mouth. The addition of the nose plug taught by Bickford forces the user to breath through the mouth in order to receive filtered air. The addition of the nose plug to the device of Pyzel could be placed anywhere in the device as long as it is accessible to the user. Furthermore, it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 181 F.2d 1019, 86 USPQ 70 (CCPA 1950).

Conclusion

20. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory

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period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darwin P. Erez who whose telephone number is (703) 605-0420. The examiner can normally be reached on M-F (8:30-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, McDermott or Shaver can be reached on (703)308-0858. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


GLENN K. DAWSON
PRIMARY EXAMINER

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